IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 576 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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ARVINDKUMAR AMBALAL PATEL

Versus

DEPUTY SECRETARY-K.K.CHAUHAN

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Appearance:

1. Special Civil Application No. 576 of 1995

MR PK JANI for Petitioner No. 1

MR KL PANDYA, AGP for Respondents

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CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 01/04/2004

ORAL JUDGEMENT

The petitioner is having a fair-price shop in village Bhaupura, Dist. Mehsana. It is the say of the

petitioner that he was running the fair-price shop after following all rules and regulations of the Essential Commodities Act, 1955. The Food Inspector of Civil Supplies Department inspected the shop of the petitioner on 28th May 1992 and issued show cause notice on 18th June 1992. Relying on the report of the Food Inspector, the District Civil Supply Officer suspended the licence of the petitioner for 90 days by order dated 3rd July 1992, at Annexure.A to the petition.

2.1 The petitioner replied the notice dated 18th June 1992 and denied all the allegations levelled against him in the show cause notice. He has also explained each point in his reply to the show cause notice.

2.2 In the meantime, the petitioner also approached the Civil Court by way of Civil Suit No.200 of 1992. In the said suit, the petitioner had prayed for stay of the order passed by the District Supply Officer suspending the licence of the petitioner to run the fair-price shop for a period of 90 days.

2.3 The District Supply Officer, by order dated 24th September 1992, ordered that the deposit of the petitioner be forfeited and also the licence should be terminated. The order of the District Supply Officer is at Annexure.D to the petition.

2.4 The petitioner preferred an appeal being Appeal No. 54 of 1992 before the Collector, Mehsana and the said appeal came to be partly allowed by the District Collector, by order dated 30th April 1993 at Annexure.F to the petition, and modified the order of imposing suspension of the licence for six months and confirming the order of forfeiture of the deposit.

2.5 Against the above order, the petitioner preferred revision application before the State Government on 21st May 1993. The Deputy Secretary issued notice on 26th May 1993 on the revision application. Since the matter was not heard, the petitioner was advised to withdraw the said revision application and an application was tendered by the petitioner on 14th June 1993. The petitioner was not allowed to withdraw the said revision application and on the contrary, after lapse of approximately more than five months, a notice was issued exercising power under suo-motu revision. The petitioner filed his reply to the said notice on 26th November 1995 and raised the preliminary objection about the issuance of the notice.

2.6 The Deputy Secretary, by order dated 20th January

1995 has cancelled the order of the Collector in appeal and restored the order of the District Supply Officer.

3. The petitioner has filed this petition on 31st January 1995 and this Court while admitting the matter, granted stay against the order of the State Government.

4. Learned Advocate Mr.Jani for the petitioner contended that the State Government has no power to issue suo-motu notice after lapse of more than 11 months. Apart from that, the authority ought to have allowed the withdrawal application tendered by the petitioner on 14th June 1993 and the notice at Annexure.I dated 9th November 1993 is prima facie without jurisdiction.

5. Learned AGP Mr.Pandya for the respondents was not in a position to justify the issuance of suo-motu notice after lapse of 11 months and that too, after three months from the date of withdrawal of the application.

6. The parties have to prefer revision application within a reasonable time, i.e. 90 days and if the revision is not preferred within that period, the State Government and its authorities cannot entertain the same due to limitation. In the present case, since it is a matter of business and livelihood of a person, the order of the Collector dated 30th April 1993 could not have been revised at least after a period of six months, whereas in the present case, the revisional authority has decided to issue suo-motu notice on 26th May 1993. The Deputy Secretary has not decided the preliminary issue raised by the petitioner and therefore, the order of the Deputy Secretary is required to be quashed and set aside and the order passed by the District Collector dated 30th April 1993 is required to be confirmed.

7. In the result, the petition is allowed. The order of the Deputy Secretary, Food and Civil Supplies Department, Govt. of Gujarat is quashed and set aside and the order dated 30th April 1993 passed by the District Collector is confirmed. Rule is made absolute to the aforesaid extent, with no order as to costs.

(K.S. Jhaveri, J.)

Sreeram.